

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RILEY WALKER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 15-cv-5252-MJP-JRC

ORDER ON PLAINTIFF'S
MOTION TO FILE
OVERLENGTH BRIEF

This matter is before the Court on plaintiff's Motion to File an Overlength brief (*see* Dkt. 12). The local rules of the Court indicate that "[n]o Opposition to the motion shall be filed unless requested by the court," however defendant has filed a Motion for Leave to File a Response, along with an attached Proposed Response (*see* Dkt. 14). Local Rules W.D. Wash. Rule 7(f)(3). Plaintiff has filed a Motion for Leave to File a Reply, with a Proposed Reply (*see* Dkt. 15).

1 Plaintiff does not request an alteration of the briefing schedule, but requests that
2 plaintiff be allowed to attach to the Opening Brief a Motion from another matter, a class
3 action raising, among other things, a claim that the ALJ in the matter herein has
4 demonstrated “a pattern of bias or misconduct against a group or particular category of
5 claimants such as [plaintiff herein]” (Declaration of William Rutzick, Dkt. 13, p. 2).

6 Because of the unusual nature of the arguments made in this case, both parties’
7 motions to file a Response and Reply, respectively, regarding the underlying Motion for
8 Overlength Brief, are granted, and the Court has considered these documents.
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10 Due to defendant’s concerns regarding personally identifiable information of third
11 parties, the Court emphasizes that the attached Motion, Response, and Reply should be
12 sealed.

13 BACKGROUND

14 Plaintiff filed a complaint in this matter challenging the denial by the
15 Administrative Law Judge (“ALJ Sloan”) of his application for Supplemental Security
16 Income (“SSI”) benefits (*see* Dkt. 1). In this complaint, plaintiff contends that additional
17 evidence submitted to the Appeals Council but not included in the administrative record
18 demonstrates “a pattern of decisions or conclusions by ALJ Sloan that are inconsistent
19 with controlling case law and/or Social Security regulations” (*see id.* ¶ 4.2). The
20 additional evidence includes, among other things, the redacted copies of 84 prior
21 decisions by ALJ Sloan (*see id.* at ¶¶ 3.5-3.6). Plaintiff contends that ALJ Sloan is biased
22 against persons like plaintiff (*see e.g.*, Declaration, Dkt. 13, ¶ 3).
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1 In Seibel/Phelps, Case No: 14-cv-1973-TSZ, plaintiff's current counsel filed a
2 class action raising, among other claims, the claim that ALJ Sloan has demonstrated a
3 pattern of bias or misconduct against a group or particular category of claimants such as
4 plaintiff (*id.*, ¶ 4). With respect to this class action, plaintiff has submitted the same
5 redacted copies of 84 prior decisions by ALJ Sloan (*see id.*). After the denial of
6 defendant's motion to dismiss the class action, plaintiffs in that case filed a 21 page
7 Motion to Remand or For Alternative Relief (*see id.*; *see also* Case No: 14-cv-1973-TSZ,
8 Dkt. 28). This Motion to Remand explains the significance of the materials submitted by
9 plaintiffs, including the redacted copies of 84 prior decisions by ALJ Sloan, and
10 arguments as to why the omitted materials should be furnished to the court.
11

12 Plaintiff contends that he cannot adequately brief the issue regarding this
13 additional material as well as the issue of the other substantive claims that plaintiff has
14 regarding errors in ALJ Sloan's decision in his case in 18 pages of the Opening Brief (*see*
15 *id.* ¶ 5). Plaintiff contends that the simplest and most efficient way to raise all relevant
16 issues adequately "is to maintain the existing briefing brief page limits, but permit the
17 parties to submit to this Court the Motion to Remand in Seibel/Phelps, Case No: C14-
18 1973-TSZ, Defendant's response thereof and Plaintiff's Reply" (*id.*). Plaintiff indicates
19 that the briefing schedules then do not need to be altered, as they are relatively soon and
20 relatively similar (*see id.*, ¶ 6). Plaintiff's arguments are persuasive.
21

22 DISCUSSION

23 Defendant contends that plaintiff's alleged bias of ALJ Sloan is not relevant to the
24 issue at hand; however, this contention is not persuasive (*see* Dkt. 14-1, p. 1). *See*

1 *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995) (citing *Hummel v. Heckler*, 736 F.2d
2 91, 94 (3d Cir. 1984)); *see also* 20 C.F.R. § 416.1440 (“An Administrative law judge
3 shall not conduct a hearing if he or she is prejudiced or partial with respect to any party .
4 . . .”). Defendant contends that the only issue before this Court is whether or not ALJ
5 Sloan’s decision is supported by substantial evidence (*see id.*). However, this Court also
6 must determine if ALJ Sloan’s decision is based on legal error. *See Bayliss v. Barnhart*,
7 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th
8 Cir. 1999)) (pursuant to 42 U.S.C. § 405(g), the court may set aside the Commissioner’s
9 denial of social security benefits if the ALJ’s findings are based on legal error or not
10 supported by substantial evidence in the record as a whole). If denial of plaintiff’s
11 application for SSI benefits was based in part on bias by ALJ Sloan, such denial could
12 violate due process as well as the ALJ’s duty to develop the record. *See Ventura, supra*,
13 55 F.3d at 902 (noting that the “right to an unbiased ALJ is particularly important
14 because of the active role played by ALJs in social security cases”) (citation omitted).
15 The Court finds persuasive the conclusion from the Fifth Circuit that “even if the record
16 was totally devoid of evidence supporting a finding of disability, ‘the bias of the
17 adjudicator might still be a ground for setting aside a determination adverse to the
18 claimant’” *Id.* at 904 (quoting *Hummel v. Heckler*, 736 F.2d 91, 95 (3d Cir. 1984))
19 (other citations omitted).

20
21 In addition, the Court is not persuaded by defendant’s argument that there has
22 been “no finding of bias against the ALJ in this case, and indeed, there should not be”
23 (Dkt. 14, p. 1). Plaintiff contends that the Appeals Council has been presented with this
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1 issue of bias in this case, but that it declined to make any conclusion on the allegation, as
 2 “the claims of bias, prejudice, and unfairness” are “beyond the scope of the Appeals
 3 Council’s authority to decide” (Dkt. 13, ¶ 3 (*citing* Social Security Ruling 13-1p, AR.
 4 309, 329)). Plaintiff also has raised this issue of bias in this matter and contends that the
 5 subject materials are relevant to plaintiff’s allegation of bias before this Court, which,
 6 obviously, has yet to render any findings or conclusions on the subject (*see id.*, ¶¶ 4-5).

7
 8 Although defendant also contends that plaintiff should instead make the relevant
 9 arguments in the Opening Brief, the Court finds persuasive plaintiff’s contentions that he
 10 cannot adequately brief in the Opening Brief the issue regarding this additional material
 11 supporting bias as well as the issue of the other substantive claims that plaintiff has
 12 regarding errors in ALJ Sloan’s decision in his case, and that the simplest and most
 13 efficient way to raise all relevant issues adequately “is to maintain the existing briefing
 14 brief page limits, but permit the parties to submit to this Court the Motion to Remand in
 15 Seibel/Phelps, Case No: C14-1973-TSZ, Defendant’s response thereof and Plaintiff’s
 16 Reply” (*see id.* ¶ 5).

17 CONCLUSION

18 For the reasons stated the Court GRANTS plaintiff’s motion (Dkt. 12) and hereby
 19 Orders that:

- 20 1. Plaintiff’s Opening Brief in this matter is limited to 18 pages supplemented by
 21 Plaintiffs’ previously filed Motion to Remand or for Alternative Relief filed in
 22 Case No: C14-1973-TSZ (Dkt 28). Both will be filed with this Court by October
 23 22, 2015. Plaintiff is directed to note in the Opening Brief which pages of the
 24

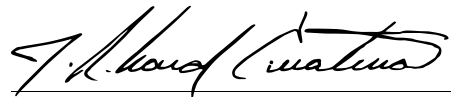
1 Motion to Remand are relevant to the matter before this Court and how they are
2 relevant.

- 3 2. Defendant's Response Brief is limited to 18 pages to be filed by November 19,
4 2015, supplemented by Defendant's Response to Plaintiff's Motion to Remand in
5 Case No: C14-1973-TSZ, which is due to be filed by November 9, 2015.

6 Defendant is directed to note in the Response Brief submitted to this Court which
7 pages of the Response to the Motion to Remand are relevant to the matter before
8 this Court and how they are relevant.

- 9 3. Plaintiff's Optional Reply Brief is limited to 9 pages to be filed December 3, 2015,
10 supplemented by Plaintiff's Reply Brief in Case No: C14-1973-TSZ, which is due
11 to be filed by November 20, 2015. Plaintiff is directed to note in the Optional
12 Reply Brief which pages of the Reply in Support of the Motion to Remand are
13 relevant to the matter before this Court and how they are relevant.
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16 Dated this 21st day of October, 2015.

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19 J. Richard Creatura
20 United States Magistrate Judge
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